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November 10, 2009

Christopher Calfee, Special Counsel
ATTN: CEQA GUIDELINES
California Resources Agency
1017 L Street, #2223
Sacramento, CA 95814

Subject: Comments on Revised Preliminary Draft CEQA Guideline Amendments for Greenhouse Gas Emissions

Dear Mr. Calfee:

On behalf of the California Department of Transportation (Department) thank you for your continued outreach to all stakeholders as part of your rulemaking for the CEQA Guidelines amendments related to greenhouse gases (GHG). The Department initially commented when OPR released the preliminary draft of the CEQA Guidelines Amendments in February 2009 and again when your agency released its draft this past summer. Some of our current comments are restatements of previously unaddressed comments and some are new. Our new comments focus largely on the revised amendments to the Appendix G checklist.

General Comments:

We commend the "less-is-more approach" to the Amendments. In particular, the recognition that the principles of CEQA do not need to be changed in order to effectively deal with greenhouse gas (GHG) emissions. The Amendments provide a solid foundation for analysis while clearly maintaining the discretion of the lead agency to determine the appropriate method of impact analysis, the significance of impacts and the appropriateness of mitigation measures.

Like other commenters, we recognize that adaptation is not currently in the Amendments. While we support the inclusion of climate change adaptation in the Amendments, we recognize that efforts to develop consistent, statewide planning scenarios and other guidance are on-going and may not be sufficiently complete to include in the Amendments. Natural Resources Agency as well as many other state agencies are actively working on the issues surrounding adaptation; these efforts have resulted in the 2009 California Climate Adaptation Strategy Discussion Draft, which was released on August 3, 2009.

Section-by-Section Comments

15064. Determining the Significance of Environmental Effects Caused by a Project

Comment: We note that references made in the January 2009 Amendments to “city or county general or specific plan, regional housing allocation plan, regional transportation plan, and regional blueprint” in subsection 15064(h)(3) have been deleted in this version of the Amendments. If that text is re-inserted, we would like to see the addition of “statewide transportation plan.” We have no further comments on this section based on the October 2009 Amendments.

15064.4. Determining the Significance of Impacts from Greenhouse Gas Emissions

Comment: The Department again appreciates the flexibility that is given in this section. The factors that a lead agency should consider are concise and well articulated. While the Department has been doing quantitative assessments for many projects, we appreciate the ability to rely on other methodologies, including qualitative analysis, when the project and its setting warrant such an approach. We acknowledge that reference to GHG targets has been deleted in the current Amendments and support that change. We have no further comments on this section based on the October 2009 Amendments.

15093. Statement of Overriding Considerations

Comment: Thank you for addressing our comment by combining subsections (a) and (d) in the current revisions.

15125. Environmental Setting

Comment: We acknowledge that regional transportation plans now appear in subsection (d) of this section and in sections 15130(b)(1)(B) and 15130(d). We appreciate that you have addressed most of our previous comment with respect to this section but we still believe that reference to “statewide transportation plan” is appropriate as well.

15126.4. Consideration and Discussion of Mitigation Measures Proposed to Minimize Significant Effects.

Comment: We feel this section strikes an appropriate balance and the specific inclusion of purchasing carbon offsets provides us with another valuable means of protecting the environment while meeting other important public goals. Thank you for maintaining that balance in the current revision. We do, however, have concerns with the newly revised text that reads as follows: “Reductions in emissions that are not otherwise required may constitute mitigation pursuant to this subdivision.” One of our concerns is that this wording is vague—“not otherwise required” by what is a key question when reading this text. We assume that what is meant is that a measure cannot be considered mitigation if it is otherwise required by law, regulation, or other legal force. If this is the meaning, then we feel that the wording is too broad. Many of the laws and executive orders dealing with climate change are far-reaching,

such as AB 32 and SB 375, and almost any measure proposed to mitigate climate change could be argued to be required by just those two laws.

We also feel that this requirement is not consistent with how mitigation for other environmental resources is handled. For example, measures required by the resource agencies under the Endangered Species Act are often times counted as mitigation for purposes of CEQA compliance.

15130. Discussion of Cumulative Impacts

Comment: Thank you for adding regional transportation plans to the list of land use documents in 15130(d) in the current revisions.

Appendix G Environmental Checklist Form

Comment: Thank you for retaining the newly created preamble language on the Appendix G Environmental Checklist Form (Checklist). We feel this language provides useful clarification regarding the intent and use of the Checklist. We particularly wish to express our support of the statement regarding the fact that the questions “do not necessarily represent thresholds of significance.”

We note that a new section on the evaluation of environmental impacts has been added to the Checklist. Our overall comment is that we feel this new text is not needed and that its effect is to turn the Checklist into the environmental document itself. Most of the statements and items under this section are already captured elsewhere in the CEQA Guidelines and are incorporated into CEQA environmental documents. While we support the intent of the text to provide careful documentation of a lead agency’s decisions, we do not support the extra work this requires for the checklist. To the extent this text reflects any substantive changes to the CEQA process, we would rather see those made in the Guidelines than in the Checklist.

XVI. Transportation/Traffic. We are aware that Natural Resources Agency has received several comment letters asking for level of service (LOS) to be deleted from the Appendix G checklist. We would like to respectfully request that it or a comparable measure of congestion remains a part of the checklist. Just as safety is an environmental impact related to the human environment, so too is traffic. Traffic congestion affects not only air quality and potentially human health but also quality of life issues, which are one of the main criteria for sustainability. The implication from those who want LOS removed from the checklist is that having it on the checklist somehow prohibits agencies from implementing other modal choices and makes a determination of significance necessary. We respectfully disagree; as the newly inserted preamble to the checklist states, the questions do not create thresholds of significance but rather a framework for impact assessment. Traffic is one component of the overall environmental impact landscape that must be examined but is not the determinant factor. Other modes of transportation, including bicycle, pedestrian, and transit must be analyzed and the transportation systems as a whole must be examined. Leaving vehicles out of this analysis

would ignore a key component of the overall transportation network and more congestion does equate to more greenhouse gas emissions. The Department does continue its efforts to reduce net vehicle trip generation and to work with regional and local governmental entities to improve mobility and to create efficient links between transportation systems and land-use.

We would like to suggest the following questions for this portion of the checklist:

- a) Exceed the capacity of the existing circulation system, based on an applicable measure of effectiveness (as designated in a general plan policy, ordinance, by a responsible agency, etc.), taking into account all relevant components of the local, regional, or interregional circulation system, including but not limited to intersections, streets, highways and freeways, pedestrian and bicycle networks, mass transit, goods movement, rail facilities and high speed passenger rail?*
- b) Conflict with an applicable congestion management program, including, but not limited to, level of service standards and requirements for travel demand measures, or other transport standards established by the applicable local, regional, state or federal air quality or traffic management agency for designated roads or highways?*
- d) Have the potential to significantly reduce the safe operation of, or increase hazards in, the circulation system due to design features (for example, sharp curves, excessive elevation changes, or dangerous intersections), incompatible uses (for example, wide or slow equipment, air traffic lanes, railroad crossings, distracting lights or signs, impeding vegetation), potential creation of slicks or debris, changes in emergency access, or conflicts with Americans with Disabilities Act requirements?*
- e) Reduce, sever, impede or eliminate pedestrian and/or bicycle circulation and access, or conflict with adopted policies, plans or programs supporting bicycle and pedestrian circulation, or cause secondary impacts on pedestrians and bicyclists through its traffic mitigation measures, such as from widening intersections to accommodate more motorized vehicles?*
- f) Cause a degradation of the performance or availability of all mass transit modes including buses, aircraft, light or heavy rail for people or goods movement, or conflict with adopted policies, plans or programs supporting mass transit circulation?*

Regarding pedestrian and bicycle transportation, we would like to point out that capacity, as referenced in question a) above, tends to be impacted in only the most urban locations, where sidewalk and bike lane crowding can occur. In most locations, pedestrian and bicycle facilities are more commonly impacted in terms of safety and access. It is therefore very important that questions d) and e) above also be included in the checklist to address these impacts on pedestrian and bicycle safety and access.

Lastly, we would like to offer this suggestion for the Recreation section of the checklist:

Would the project reduce, sever, or eliminate an existing neighborhood or regional park or other types of recreational facility such as multi-use trails, bike paths or equestrian trails?

XVIII. Mandatory Findings of Significance. We would like to see subsection (a) changed to be consistent with Section 15065(a)(1). Specifically, we recommend that the word "substantially" be added in front of "reduce the number or restrict the range of a rare or endangered plant or animal."

Again, the Department appreciates the opportunity to comment on the October 2009 revisions. If the Department can be of any further assistance or provide any additional information, please do not hesitate to contact Kelly Dunlap, Chief, Environmental Management Office, at (916) 651-8164.

Sincerely,



JAY NORVELL
Chief
Division of Environmental Analysis

cc: Kelly Dunlap